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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JONATHAN CARROLL,

11 Plaintiff,

12 v.

13 JOE BIDEN,

14 Defendant.

CASE NO. C22-5368JLR

ORDER ON MOTION TO
APPOINT COUNSEL

15 Before the court is *pro se* Plaintiff Jonathan Carroll’s motion for appointment of
16 counsel. (Mot. (Dkt. # 2).) Mr. Carroll brings a Racketeer Influenced and Corrupt
17 Organizations Act (“RICO”) claim against President Joe Biden for unspecified
18 “environmental violations.” (*See* Compl. (Dkt. # 1) at 3.) Having considered the motion,
19 the relevant portions of the record, and the applicable law, the court DENIES Mr.
20 Carroll’s motion.

21 The appointment of counsel for a *pro se* litigant in a civil case “is a privilege and
22 not a right.” *United States ex rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965).

1 A court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C.
2 § 1915(e)(1) but should do so “only in exceptional circumstances.” *Palmer v. Valdez*,
3 560 F.3d 965, 970 (9th Cir. 2009). When determining whether exceptional circumstances
4 justify the appointment of counsel, the court considers “the likelihood of success on the
5 merits and the ability of the petitioner to articulate his claims *pro se* in light of the
6 complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331
7 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Neither
8 of these considerations is dispositive; instead, they must be viewed together. *Id.*

9 Mr. Carroll’s form motion contains few supplemental details. (*See Mot.*) It
10 establishes only that he has not been granted permission to proceed *in forma pauperis*
11 (“IFP”);¹ that his efforts to secure his own counsel have included searching online and
12 contacting “10 or so” attorneys “over the last 30 days”; and that no state or federal
13 agency has determined that there is reasonable cause to believe the allegations in his
14 complaint are true. (*See Mot.* at 1-3.) Thus, the court cannot conclude from Mr.
15 Carroll’s motion that he is “unable to afford counsel,” which is reason enough to deny his
16 motion. *See* 28 U.S.C. § 1915(e)(1). Mr. Carroll also neglects to state why his claim is
17 likely to succeed, though it is clear from the court’s preliminary review of the complaint
18 that success is not likely. (*See generally* Compl.) The court reaches this finding because
19 Mr. Carroll sues the President under RICO for unspecified environmental violations
20 committed “through actions/inaction of various Government agencies” (*see id.* at 5), and

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22 ¹ Mr. Carroll has not sought to proceed IFP. (*See generally* Dkt.)

1 such claims are unlikely to succeed, *see, e.g., Heckman v. State of Wash.*, No. C04-
2 5447RJB, 2005 WL 1719869, at *8 (W.D. Wash. July 25, 2005) (“[S]overeign immunity
3 bars a RICO claim against the United States.”), *aff’d sub nom. Heckman v. Washington*,
4 180 F. App’x 696 (9th Cir. 2006); *McMillan v. Dep’t of Interior*, 907 F. Supp. 322, 326
5 (D. Nev. 1995) (“No RICO statute waives the sovereign immunity of the United States or
6 its agencies.”), *aff’d sub nom. McMillan v. U.S. Dep’t of Interior*, 87 F.3d 1320 (9th Cir.
7 1996). Because Mr. Carroll has not demonstrated that he is unable to afford counsel or
8 that his complaint is likely to succeed on its merits, the court must conclude that
9 exceptional circumstances do not warrant the appointment of counsel. *See Wilborn*, 789
10 F.2d at 1331.

11 Finally, the court doubts that it will be able to find an attorney to take Mr.
12 Carroll’s case. Although the court can, in certain circumstances, request that an attorney
13 represent a *pro se* litigant, it cannot force a lawyer to take a case. *See* 28 U.S.C.
14 § 1915(e); *see also Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296, 307
15 (1989) (noting that courts may “ask but not compel lawyers to represent indigent
16 litigants”). The court has adopted a plan for recruiting counsel to represent indigent
17 litigants pro bono, but only plaintiffs in “civil rights actions” are eligible. *See* W.D.
18 Wash. General Order 16-20 (Dec. 8, 2020), [https://www.wawd.uscourts.gov/](https://www.wawd.uscourts.gov/sites/wawd/files/GO16-20AmendedProBonoPlan.pdf)
19 [sites/wawd/files/GO16-20AmendedProBonoPlan.pdf](https://www.wawd.uscourts.gov/sites/wawd/files/GO16-20AmendedProBonoPlan.pdf). An action to establish the
20 President’s RICO liability for unspecified environmental violations likely does not
21 qualify as a civil rights action. Even if it did, Mr. Carroll reports that he has contacted
22 approximately ten attorneys over the past month or so, none of whom was willing to take

1 his case. (*See* Mot. at 2.) Thus, the court doubts that an attorney would volunteer to take
2 Mr. Carroll's case for free.

3 In sum, Mr. Carroll has not demonstrated that this case involves the type of
4 exceptional circumstances that warrant appointment of counsel by the court. For the
5 same reason, the court determines that Mr. Carroll's request for court-appointed counsel
6 should not be passed on to the pro bono screening committee for further review. *See*
7 W.D. Wash. General Order No. 16-20, Section 3(c). Accordingly, the court DENIES Mr.
8 Carroll's motion for appointment of counsel (Dkt. # 2).

9 Dated this 3rd day of June, 2022.

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12 JAMES L. ROBART
13 United States District Judge
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